

**MINUTES
ZONING BOARD OF ADJUSTMENT
OCTOBER 20, 2009**

1. CALL TO ORDER – O'Reilly called the meeting to order at 4:00 p.m.

2. ROLL CALL

Members Present: Andrews, Garst, O'Reilly and Behrens (arrived after roll call)
Absent: Mescher
Staff: Malmquist, Sall and Wade

3. PLEDGE OF ALLEGIANCE

4. ADOPTION OF AGENDA

Motion by Andrews, second by Garst to adopt the agenda as printed. Motion carried by unanimous voice vote.

5. APPROVAL – MINUTES OF SEPTEMBER 15, 2009 MEETING

Motion by Garst, second by Andrews to approve the minutes as written. Motion carried by unanimous voice vote.

6. PROOF OF PUBLICATION – Sall

7. REVIEW OF MEETING PROCEDURES – O'Reilly

8. PUBLIC HEARINGS

A. CASE #AP-09-001: Continued public hearing on the request of E. Lyle Kinley, Jr. and Gwendolyn A. Teeple to appeal the administrative decision of the Community Development Department to not allow the construction of a detached garage as a principle use in an R-3/Low Density Multi-Family Residential District on a vacant lot (Lot 41, Lakoma Addition) which is located directly across the street to the east from their residence at 50 Pickard Lane.

Gwen Teeple, 50 Pickard Lane, said they bought their property in 1987 which included the vacant lot across the street so the parcels have been linked for more than 20 years. The lot has a shed and they also store trailers and water “toys” and their daughter parks on the lot. She said a garage is needed for security and to clean up the property. She then explained that two years ago, the Planning Department said a garage could be built on the lot but now are saying it is not allowed. She then presented pictures to the Board showing the “flavor” of the area. She said Pickard Lane is not a standard street but more like an alley and that there are many detached garages close to the street. Their proposed garage would be set back 30’ to 40’ and in line with the houses on that side of the street. She finds it hard to understand a down side to this request because the garage would not detract from the area but add security and looks to the street.

Leo Martin, 233 Pearl Street, speaking on behalf of the applicants, said this request is an appeal of a decision of the Planning Department staff. The Board can uphold or reverse that decision and permit the garage and ask staff to change the language in the Ordinance. He said his clients are not taking a stand on the text amendment. They are only asking for permission to allow the garage. He explained that 2 years ago, the applicants were told they could build but they never proceeded. In the meantime, the staff changed their interpretation of the code. He explained that Lot 41 is across the street and behind the house at 50 Pickard Lane, but not adjacent. An adjacent owner could build a garage on the lot.

Andrews said he does not see a hardship in this case. Malmquist said the request is not a variance so a hardship is not required.

Behrens asked if the lot in question is buildable? Malmquist said if all setbacks are met the lot is considered buildable.

Garst asked if, under the code today, would a parking lot be allowed on the lot. Malmquist said that a parking lot would be allowed but not a garage.

O'Reilly asked when the Board should take action on the amendment. Malmquist said action on the appeal can be taken first and a separate action on the text amendment can be taken after the cases have been heard.

Behrens said she feels the area is unique and the options for the property are limited.

Andrews noted there are other stand-alone garages in the area. He feels that approving the request will better the neighborhood.

Motion by Andrews, second by Garst to overturn the administrative decision of the Community Development Department and to allow the construction of a detached garage on Lot 41, Lakoma Addition and to continue this public hearing regarding an amendment to Section 15.10.020 until all other cases have been heard.

VOTE: AYE – Andrews, Behrens, Garst and O'Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

B. CASE #BA-09-005: Public hearing on the request of Etta R. Henderson for a 17-foot rear yard setback variance from §15.10.050 Site Development Regulations in the R-3/Low Density Multi-Family Residential District of the Municipal Code (Zoning Ordinance) to allow the construction of an attached garage onto the existing structure at 330 North 40th Street (Lot 1, Block 17, Mid City Addition). The proposed garage would be set back 3 feet from the rear property line instead of the required 20 feet.

Jack Henderson, 2203 Avenue A, speaking for his sister, said because of the placement of the home on the lot, there is no room for the garage and they are asking for a variance.

Garst said, in his opinion, this is a textbook case of an unnecessary hardship.

Andrews noted that a variance would be needed to place a garage anywhere on the lot.

Motion by Garst, second by Behrens to approve the request for a 17-foot rear yard setback variance at 330 North 40th Street, as per staff recommendation.

VOTE: AYE – Andrews, Behrens, Garst and O'Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

C. CASE #BA-09-006: Public hearing on the request of Robert Jordan for a 9-foot street side yard setback variance from §15.08B.050 Site Development Regulations in the R-1/Single Family Residential District of the Municipal Code (Zoning Ordinance) to allow the construction of a 22' X 24' detached garage at 202 Morgan Street (Lot 14, Block 11, Galesburg Addition). The proposed garage would be set back six feet from the street side property line instead of the required 15 feet.

Robert Jordan, 202 Morgan Street, said he wants to construct a garage 6 feet from the sidewalk so that it doesn't block a window on his house. He said the location of the garage wouldn't block the view at the intersection of Harrison and Morgan. If he builds behind the house 30 inches of dirt needs to be taken out and a retaining wall replaced. He said he takes care of wife and son, who are ill, and it would help if the garage could be close to the house.

Andrews noted that the applicant could build a 21-foot wide garage attached to the house and not need a variance and Behrens concurred saying that attaching the garage would gain the applicant 6 feet along the property line.

Jordan said he would consider that option

Wade said the Board could approve a 3-foot variance if Mr. Jordan needs a 24-foot garage.

Discussion ensued regarding width of proposed garage and building code issues.

Andrews asked if the applicant needed a 24-foot garage or if 21 feet would suffice. Jordan said he could get by with a 21-foot wide garage.

Malmquist said approving a 3-foot setback variance would allow Mr. Jordan some flexibility.

Motion by Andrews, second by Garst to approve a 3-foot street side yard setback variance for an attached garage at 202 Morgan Street due to the existing topography on site.

VOTE: AYE – Andrews, Behrens, Garst and O’Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

D. CASE #BA-09-007: Public hearing on the request of Larry B. Meyerson for variances from §15.32.070(02) – Screening and Buffering, §15.32.080(03) – Signs and §15.32.100(02) – Lighting, all in Chapter 15.32 – CDO/ Corridor Design Overlay of the Municipal Code (Zoning Ordinance) for property located at 3415 West Broadway (East 20 feet of Lot 13, all of Lots 14 through 22, Lot 23 except the North 11 feet, all of Lots 26 through 29 and the East 20 feet of Lot 30, Block 14 Ferry Addition and all vacated alleys adjacent).

Robert Livingston, 310 West Kanessville, said the variance request is made up of 3 components; signage, which is the top priority, the light poles and the trash enclosure. He then submitted a photo of the existing sign which was erected in 2000 along with a letter from Larry Meyerson explaining the background of the sign. This sign cost the applicant close to \$10,000 which is a hardship and they are asking that they be allowed to reface it.

Regarding the second variance for the light poles. The hardship is that if the poles are removed, utilities will not reattach to metal poles and the facilities would need to be buried. He then submitted photos of light poles in the vicinity (Exhibits D, E and F) and a letter from Qwest (Exhibit I).

The third variance is for the screening of the dumpsters. He then submitted Exhibit G showing the existing trash enclosure. The applicant is asking to be allowed to expand and gate it to bring it into compliance.

O’Reilly asked what the trigger was for the improvements. Malmquist explained that because the cost of the interior improvements exceeds one-half of the assessed value of the property, the requirements of the CDO district have to be met. She also said the code requires that screening for exterior trash storage be of the same materials and colors as the adjacent building. New pole signs are not allowed. An existing sign can be refaced but it has to comply with the requirements in the CDO district.

Garst said it appears that the dumpsters belong to Payless Shoes. Wade said they are used by several tenants.

Livingston explained that both parcels are owned by the applicant but the Payless building is not included in the variance request. He said they don’t want to move the trash enclosure and they don’t want the expense of

the required improvements. They are out of sight in their current location. They would like the variance for a larger enclosure with a gate. The sign, however, is their biggest priority. Wade said the concept of the CDO district is to clean up properties as improvements are made along West Broadway.

Discussion ensued regarding the existing utility poles.

Livingston said if they use conforming metal poles, their lease with the utilities will be terminated and the facilities will have to be moved at the owner's expense.

Andrews said he feels help on the sign issue is justified but that the trash enclosure and lighting needs to be brought up to code. Garst concurred and said the existing building creates a hardship for the sign.

Motion by Garst, second by Andrews to deny the applicant's request for a variance from Section 15.32.070(02) – Screening and Buffering.

VOTE: AYE – Andrews, Behrens, Garst and O'Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

Motion by Garst, second by Behrens to deny the applicant's request for a variance from Section 15.32.100(02) – Lighting.

VOTE: AYE – Andrews, Behrens and Garst. NAY – O'Reilly. ABSTAIN – None. ABSENT – Mescher. Motion carried.

Motion by Garst, second by Andrews to approve the applicants request for a variance from Section 15.32.080(03) – Signs due to the placement of the building on the property.

VOTE: AYE – Andrews, Behrens, Garst and O'Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

A. CASE #AP-09-001: Continued public hearing to discuss directing staff to consider amending Section 15.10.020 of the Municipal Code which allows private parking lots in an R-3/Low Density Multi-family Residential District.

Malmquist gave a brief history of previously allowing private garages on vacant lots that were zoned R-3.

Discussion ensued regarding possible changes to the section.

Motion by Behrens, second by Garst to direct staff to clarify the language in Section 15.10.020 regarding private parking lots and structures in the R-3 district.

VOTE: AYE – Andrews, Behrens, Garst and O'Reilly. NAY – None. ABSTAIN – None. ABSENT – Mescher. Motion carried.

9. OTHER BUSINESS

A. Items of Interest – None.

10. ADJOURNMENT – O'Reilly adjourned the meeting at 5:13 p.m.